

WISHA REGIONAL DIRECTIVE

WISHA Services

Department of Labor and Industries

2.11

SIGNIFICANT INSPECTIONS

Date: August 18, 2004

I. Background

The Department of Labor and Industries (L&I) uses internal processes to manage its activity under the Washington Industrial Safety and Health Act (WISHA). While standard processes are found in the WISHA Compliance Manual, special attention is necessary for cases most likely to establish important policy or legal precedence or to attract significant public attention. This directive ensures that such cases have been developed to the satisfaction of the appropriate Regional Administrator, the Deputy Director for Field Services, and the Assistant Director for WISHA Services. It does not alter existing responsibility for field operations, which resides with regional management, or for WISHA policy, which resides within WISHA Services.

This directive establishes expectations for L&I staff; its contents are not required by statute or rule and are not intended to provide a basis for any legal arguments.

II. Scope and Application

This WISHA Regional Directive (WRD) provides guidance to all staff involved in WISHA enforcement activities involving significant events or high-profile cases.

III. Enforcement Protocols

A. Which cases are considered significant cases?

Cases should be considered significant, at least initially, whenever they involve

- a fatality (other than apparently natural causes) or catastrophe;
- the need to go to court to enforce a subpoena or to obtain a warrant to complete the inspection;
- media or other inquiries showing a meaningful public interest in the inspection;
- cases where total proposed penalties are expected to exceed \$50,000;
- other cases identified by the involved supervisor, the Regional Compliance Manager, the Program Manager for Consultation and Compliance Services (C&C Services), the Senior Program Manager for WISHA Policy & Technical Services (P&TS), the Regional Administrator (RA), the Assistant Director (AD) for WISHA Services, the Deputy Director (DD) for Field Services or the Director.

B. How will significant cases be initially reviewed?

Within two weeks of a case being identified as a significant case, the Compliance Manager will convene an initial case conference, working with the Program Manager for C&C Services in WISHA P&TS. The case conference will include, at a minimum, the CM, the supervisor and inspector(s), and the Program Manager for C&C Services (or the Senior Program Manager for WISHA P&TS). If the RA, the AD for WISHA Services, or the DD for Field Services are not able to participate directly, their respective staff must brief them as soon as possible.

Additional attendees may include appropriate technical specialists, representatives of public affairs, assistant attorneys general, the Program Manager for Appeals, and staff from other agency programs if appropriate.

The initial case conference will be chaired by the RA or the RA's designee and include the following:

- Background presentation by regional staff, including initial assessment of the known facts and the anticipated compliance issues requiring investigation;
- Discussion of evidentiary issues and resources needed to prepare the case;
- Discussion of known policy or legal issues requiring special attention;
- Agreement on the team assigned to work the case, including the roles and responsibilities of regional and central office staff;
- Discussion about whether an early briefing for the Director is appropriate;
- Discussion about whether the case should continue to be considered a significant case;
- Establishment of an investigation timetable that will make it possible to conduct a comprehensive briefing of the Director no later than 150 days after the opening conference (if the case is identified too late in the process to allow for the normal time frames to be met, the timetable established by the team must ensure that sufficient review time is available);
- Preparation of a written list of assignments with due dates and the names of responsible staff, to be maintained by the supervisor for the case;
- Discussion about when and how to prepare a summary briefing memo, to be completed in conjunction with the Office of the Attorney General (this will be a privileged document reflecting the legal advice of the involved attorneys to L&I as part of its decisionmaking process).

Note: Beginning the inspection and developing a preliminary work plan should not be delayed by the need to schedule an initial case conference. The supervisor is responsible for ensuring that work proceeds appropriately and that any information obtained is available at the initial case conference. The region should also consult with P&TS as appropriate regarding the progress of the case during its opening phases.

C. How can cases be removed from the list of significant cases?

If the case was placed on the list without direct participation by the RA, the AD for WISHA Services, the DD for Field Services, or the Director, it can be removed by agreement of the Compliance Manager and the Program Manager for C&C Services (all parties will be notified of the intention to remove the case).

If the case was placed on the list by the RA, the AD for WISHA Services, the DD for Field Services, or the Director, it can be removed by the agreement of the RA and the AD for WISHA Services.

D. Who will arrange an early briefing of the Director if one is necessary?

If the RA, the AD for WISHA Services, and the DD for Field Services agree that an early briefing is necessary, they will plan and schedule such a briefing.

E. How frequently will the investigation team meet?

The investigation team, including both regional and central office staff, will meet at least monthly (more often if determined by regional management). The team will discuss the portions of the file that have been completed as well as any gaps that remain under investigation.

F. When will the inspection review be conducted?

When the RA decides that the team is ready, but no later than 120 calendar days after the opening conference, a policy and technical review conference will be conducted. Unless the decision has already been made that a Director's briefing is not likely, the review conference will include the RA, the AD as well as other representatives of the region and of WISHA Services, as well as an assistant attorney general. If a Director's briefing is not likely, the RA and the AD for WISHA Services may choose not to attend provided that their respective staff briefs them immediately.

The review will be chaired by the RA or designee and will cover the following:

- Review of the possible violations and the evidence in support of them;
- Consideration of any special policy or legal issues;
- Identification of any further steps needed to complete the case file (perhaps including legal memoranda, additional interviews, or other evidence needed to fill gaps;
- Preparation of a written list of assignments with due dates and the names of responsible staff, to be maintained by the supervisor for the case.

G. When and how will the Director's Briefing be conducted?

If the RA, DD, and AD for WISHA Services are in agreement regarding the inspection results, they will plan and schedule a briefing with the Director no later than 150 calendar days after the opening conference, unless the RA and the AD for WISHA Services agree that no briefing is needed.

If a briefing is scheduled, it will include representatives of the region, WISHA Services, the Office of the Attorney General, and Public Affairs. The RA will present the team's recommendations to the Director.

If the RA, DD, and AD for WISHA Services are not able to reach full agreement regarding the inspection results before the Director's briefing, the AD for WISHA Services will present the issues to the Director. The RA and DD will have an opportunity to provide any additional analysis or information.

H. What format will be used for briefing materials?

Briefing materials will be presented in the standard case-file format. In addition, they will be presented in a binder with tabs to identify critical information and accompanied by a privileged briefing document prepared in collaboration with assigned assistant attorneys general. The regional compliance manager and the Program Manager for C&C Services will coordinate with the AGO to develop and obtain the necessary memo.

The complete set of briefing materials will be developed and provided by the regional enforcement staff, with assistance from WISHA P&TS as appropriate.

Approved: _____
Michael Silverstein, Assistant Director for WISHA Services

For further information about this or other WISHA Regional Directives, you may contact WISHA Policy & Technical Services at P.O. Box 44648, Olympia, WA 98504-4648 or by telephone at (360)902-5503. You also may review policy information on the WISHA Website (<http://www.lni.wa.gov/safety/>).